IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

CRP.No. 1477 of 2004

OP(ELE.) NO.100/1997 of ADDITIONAL DISTRICT COURT (ADHOC-I), ERNAKULAM

REVN. PETITIONER: RESPONDENT:

THE KERALA STATE ELECTRICITY BOARD
REP. BY ITS SECRETARY, KERALA STATE
ELECTRICITY BOARD, THIRUVANANTHAPURAM.

BY ADV. SRI.A.SUDHI VASUDEVAN, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS: PETITIONERS:
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1. P.V. CHACKOCHAN, S/O. VARU,
PADUPURAKKA, POONITHURA P.O., KOCHI-19.

2. P.C. VARGHESE, S/O. P.V. CHACKOCHAN,
PADUPURAKKA, POONITHURA P.O., KOCHI-19.

BY ADV. SRI.A.RAMACHANDRAN NAIR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/08/2007, ALONG WITH CRP NO. 285 OF 2005 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NO.3945/2004 IN C.R.P.NO.1477/2004

DISMISSED

24/8/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

AHZ/

K.T. SANKARAN, J.

C.R.P.NOS.1477, 1480, 1495 of 2004,
285, 286 & 287 OF 2005

Dated this the 24th day of August, 2007

O R D E R

These Civil Revision Petitions arise out of O.P.(Ele.) Nos. 342 of 1996, 352 of 1996 and 100 of 1997, on the file of the Additional District Court (Adhoc-I), Ernakulam. The aforesaid three Original Petitions along with O.P.(Ele.) No.326 of 1996 were considered and disposed of by the court below by the common order dated 31st July, 2004. As against O.P. (Ele.)No.342 of 1996, the Kerala State Electricity Board has filed C.R.P.No.1495 of 2004, while the claimant before the court below has filed C.R.P.No.286 of 2005. Challenging the order in O.P.(Ele.) No.352 of 1996, the Board has filed C.R.P.No.1480 of 2004 and the claimant has filed C.R.P.No.287 of 2005. As against the order in O.P.(Ele.) No.100 of 1997, the Board has filed C.R.P.No.1477 of 2004 while the claimant has filed C.R.P.No.285 of 2005.

2. For the purpose of 110 KV Kalamassery – Aroor electric line, trees were cut from the properties of the claimants situated in Nadama village. Dissatisfied with the compensation awarded by the Board, the claimants have filed the Original Petitions. The court below held that the amount awarded to the claimants is low. Adopting annuity method, 5%

rate of return was assessed and compensation was fixed by the court below on that basis. Diminution of land value was also awarded by the court below. While fixing the land value, the court below rejected Ext.A1 on the ground that the said property being a small plot would have fetched a fancy price. Another reason for rejection of that document is that neither the vendor nor the purchaser of Ext.A1 was examined. In view of the Supreme Court decisions in **Land Acquisition Officer** v. **Narasaiah** (2001 (1) KLT 885 (SC)) and **State of Haryana** v. **Ram Singh** (2001 (3) KLT 130 (SC)), this reasoning adopted by the court below for rejection of Ext.A1 is not proper.

3. The court below relied on the decision in **Kumba Amma** v. **K.S.E.B.** (2000 (1) KLT 542), for the purpose of fixing the rate under the annuity method. In Ext.C1 report submitted by the Commissioner he has calculated the value of the property taking into account eleven metres each towards either side of the electric line for determining the area of the land injuriously affected due to the drawal of electric line. The court below rejected the method of fixing eleven metres on either side on the ground that the basis for the same is not stated. Learned counsel for the claimants submitted that going by the Indian Standard Code of Practice for Design, Installation and Maintenance of Overhead Power Lines, the Commissioner

was justified in taking into account eleven metres of land on either side. This Code of Practice, in so far as transmission voltage of 110 KV, recommended width of route of way is 22 metres. But the relevant material was not produced by the claimants before the court below. Learned counsel for the claimants also submits that the fixation of land value at Rs.35,000/- was made in some cases and C.R.P.Nos.1183 and 1187 of 2004 filed by the Board against that order was dismissed. The counsel submits that therefore, the court below was not justified in adopting Rs.30,000/- as the land value.

4. It is submitted by the counsel for the claimant as well as the Standing Counsel for the Electricity Board that in view of the subsequent Supreme Court decisions, a fresh look is necessary in the matter for fixation of compensation. The counsel submitted that they may be afforded an opportunity to adduce such further evidence and to produce such other materials to substantiate their contentions in the light of the decision of the Supreme Court in **K.S.E.B**. v. **Livisha** (2007 (3) KLT 1(SC)), wherein the Supreme Court held as follows:

> "10. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be

> determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.
>
> 11. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

5. In the light of the decision of the Supreme Court and taking into account the submission made by the counsel praying for a further opportunity to produce additional materials and evidence, I am of the view that the common order passed by the court below requires to be set aside and the court below should be directed to consider the matter afresh.

6. Accordingly, all the Civil Revision Petitions are allowed and the common order dated 31st July, 2004 is set aside. The court below shall afford an opportunity to either side to produce such other materials and evidence. The court below shall dispose of the cases in the light of the aforesaid Supreme Court decision and based on the documentary and oral evidence available in the case, as expeditiously as possible. No order as to costs.

Parties shall appear before the court below on 24th September, 2007.

(K.T.SANKARAN)
Judge

ahz/